

NON REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.767 OF 2009
[Arising out of SLP{C} No.48 of 2009]**

D.P.Kesari & Anr.

... Appellants

VERSUS

The Board of Director of Allahabad
Agricultural Institute

...Respondent

ORDER

1. Leave granted.
2. This appeal is directed against the final judgment and order dated 23rd of October, 2008 passed by the High Court of Judicature at Allahabad in Writ Petition No.5158 of 1989. By the impugned final judgment, the High Court had allowed the writ petition filed by the landlord- respondent No.3 and the suit of the landlord

for eviction and for recovery of arrears of rent was decreed.

3. The writ petition arose in the following manner :-

A suit was filed by the landlord-respondent before a learned Judge of the Small Causes Court at Allahabad for eviction of the appellants and also for arrears of rent, inter alia, on the ground that the appellant No.1 was a defaulter in payment of rent in respect of No.39 B, Allahabad Agricultural Institute, Naini (hereinafter referred to as the 'suit premises') and in view of Section 2(1)(b) read with Section 3(q) of the U.P. Urban Buildings Regulation of Letting, Rent and Eviction Act, 1972 (in short the 'U.P. Act'), the appellant No.1 was not entitled to occupy the suit premises after termination of his employment. The learned Judge of the Small Causes Court came to a finding that the provision of the U.P. Act were applicable to the suit premises and further the suit premises was not allotted to appellant No.1 as a part of contract of his employment and that there was no default in payment of rent. It was also held by the Small Causes Court that the tenancy was not

validly terminated. Accordingly, the suit was dismissed on the aforesaid grounds. Feeling aggrieved, the landlord-respondent preferred a revision case before the District Judge, Allahabad. By an order dated 25th of January, 1989, the said revision case was allowed and the matter was remitted back to the trial court to decide the case afresh stating that the finding was not recorded on a proper appraisal of the entire evidence on record and accordingly the learned Judge of the Small Causes Court had acted illegally and with material irregularity in the exercise of his jurisdiction. Against the aforesaid order of remand passed by the revisional court, the appellants filed a writ petition challenging the aforesaid order of remand. Before the High Court, it is an admitted position that the order of remand was challenged at the instance of the appellants. The High Court by the impugned order had set aside the order of the revisional court and allowed the eviction petition by passing a final order in the following manner :-

“Accordingly, writ petition is disposed of. Revision filed by landlord respondent No.3 is allowed. Judgment and decree passed by the

trial court is set aside. Suit of the plaintiff for eviction and for recovery of arrears of rent is decreed.”

4. It is this order which was challenged by the appellants by way of a special leave petition which on grant of leave was heard in presence of the learned counsel for the parties.
5. In our view, the judgment of the High Court needs to be set aside on a very short point. It is an admitted position that there was no order of eviction either passed by the trial court or by the revisional court. In fact the trial court by its final order had rejected the application for eviction against which revision was moved which set aside the said order and directed remand on the ground stated in the said order, therefore, the question of decreeing or directing the eviction of the appellants in the writ petition filed by the tenants could not arise at all. It is also an admitted position, that the

revisional court on the revisional application remanded the matter to the trial court for fresh decision. Feeling aggrieved by the said decision of the revisional court, the appellants- tenants had filed a writ petition. In such a writ petition, it was not open to the High Court to direct the eviction of the appellants when the landlord-respondent had not moved against the order of remand and secondly there was no order of eviction passed either by the trial court or by the revisional court. In our view, this is not permissible. Since there was no order of eviction and when admittedly the tenants had moved a writ petition against an order of remand passed by the revisional court, the question of passing a decree or order of eviction on a writ application, which was filed not by the landlord but by the tenants, could not arise at all. That being the position, we set aside the judgment of the High Court and the matter is remitted back to the High Court for fresh decision on the question

whether the order of remand passed by the revisional court was justified in the facts and circumstances of the case.

6. For the reasons aforesaid the impugned order is set aside. The appeal is allowed to the extent indicated above. The High Court is requested to decide the writ petition on the question indicated hereinabove at an early date preferably within four months from the date of supply of a copy of this order. No order as to costs.

.....J.
[Tarun Chatterjee]

New Delhi;
February 06, 2009.

.....J.
[H.L.Dattu]